

EXHIBIT J

2 UNITED STATES DISTRICT COURT

ORIGINAL

3 WESTERN DISTRICT OF NEW YORK

4 - - - - -

5 MARK T. DUBLINO

6 Plaintiff

7 -vs-

8 SGT. JUSTIN BIEGAJ, SGT. ROBERT DEE,

9 DEPUTY BRIAN THOMPSON, DEPUTY FRANK

10 GELSTER, SGT. MR. CROSS, SGT. MR. ROBINSON,

11 DEPUTY MR. P. GIARDINA, DEPUTY SHAWN WILSON

12 Defendants

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14 Civil Action No. 6:19-cv-6269-DGL

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Deposition of ROBERT DEE taken pursuant to notice
via videoconference on Friday, July 9, 2021 commencing
at 11:01 a.m.

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Reported by:

COMPUTER REPORTING SERVICE

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10 ERIE COUNTY DEPARTMENT OF LAW

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1 R. Dee - Examination by Mr. Modica

2 ROBERT DEE

3 called herein as a witness, being duly sworn,

4 testified as follows:

5 EXAMINATION BY MR. MODICA:

6 Q. Good morning, Sergeant. My name is Steve
7 Modica. I'm pro bono counsel for Mark Thomas Dublino
8 who as you know commenced a lawsuit against you and
9 several of your colleagues for an incident that
10 occurred on March 9th of 2018.

11 I'm going to ask you a series of questions. If you
12 don't understand them, feel free to ask me to rephrase
13 them.

14 We are doing this virtually so it's important that
15 you wait until I'm done with my question before you
16 answer and it's just as important for me to wait until
17 your answer is complete before I ask another question.

18 So is that acceptable to you?

19 A. Acceptable.

20 Q. Terrific. Sir, are you currently employed by
21 the Jail Management Division of the Erie County
22 Sheriff's Office?

23 A. Yes.

24 Q. How long have you been employed by them?

25 A. Since 2004.

1 R. Dee - Examination by Mr. Modica

2 Q. And it's correct that your current rank is a
3 sergeant?

4 A. Yes.

5 Q. And were you a sergeant during 2018?

6 A. I'm sorry. You broke up, sir.

7 Q. I'm sorry. Were you a sergeant during 2018?

8 A. Yes.

9 Q. And were you performing your work in 2018 at
10 the Erie County Holding Center?

11 A. Yes.

12 Q. Were you working at the Erie County Holding
13 Center on March 9th of 2018?

14 A. I believe so.

15 Q. If you recall what was your job assignment
16 that day?

17 A. I do not recall.

18 Q. Okay. To your recollection did you ever
19 interact with Mark Thomas Dublino before March 9th of
20 2018?

21 A. I don't recall.

22 Q. And this case is about interactions between
23 you and others with Mark Dublino on March 9th of 2018.

24 Are you aware that there's a video that shows at
25 least some of those interactions?

1 R. Dee - Examination by Mr. Modica

2 A. When I talked to Ms. Molisani she did state
3 there was a video.

4 Q. Have you seen the video before?

5 A. No.

6 Q. All right. I've got that video here. It's
7 about three minutes long. So I'm going to show it to
8 you and ask you a series of questions about it. Just
9 give me a second.

10 Okay. Sergeant Dee, first of all, can you see on
11 your screen what appears to be a video with four boxes
12 on it?

13 A. Yes.

14 Q. Okay. And just for purposes of the record so
15 it's clear, in the upper left-hand box is a box labeled
16 Alpha Hallway.

17 Do you see that?

18 A. Yes.

19 Q. And below that on the left-hand side of the
20 screen there's a box labeled Attorney Visit Sallyport.

21 Do you see that?

22 A. Correct.

23 Q. And in the upper right side do you see a box
24 labeled Attorney Visit A; do you see that?

25 A. Yes.

1 R. Dee - Examination by Mr. Modica

2 Q. And finally at the bottom right a box labeled
3 Attorney Visit B. Do you see that?

4 A. I do.

5 Q. And do you also see that the video is
6 timestamped to be on March 9th of 2018 starting at
7 around 10:22 a.m.; do you see that?

8 A. I do.

9 Q. All right. I'm going to start the video. If
10 you could, please tell me to pause as soon as you see
11 yourself or if you see yourself.

12 A. Mr. Modica, just one thing. Just so you're
13 aware, the Skype box -- the Zoom box is on the
14 right-hand side of my computer screen and does cover
15 the right side upper and lower.

16 Q. So you are not seeing this as well as you'd
17 like to; is that what you're telling me?

18 A. I don't know where I can move the picture
19 where all of us come up. It's on the right-hand side
20 of my monitor here and it blocks off maybe a corner of
21 the pictures you're presenting.

22 MR. MODICA: Why don't we go off the record
23 for a second.

24 (Discussion held off the record.)

25 Q. Okay. At this point I'm going to begin the

1 R. Dee - Examination by Mr. Modica
2 video which, again, has been marked as Deposition
3 Exhibit A, and again, Sergeant, if you could let me
4 know if and when you can see yourself come into any of
5 the boxes I'd appreciate it.

6 (Deposition Exhibit A played.)

7 A. I see myself coming up right now.

8 Q. Okay. Just for purpose of the record are you
9 looking at the alpha hallway box?

10 A. That's correct. Labeled 294.

11 Q. Terrific. And for the record I paused it at
12 that box at 10:22 and 43.435 seconds a.m.

13 | Can you identify yourself in that box, sir?

14 A. I believe I'm the second person in uniform
15 coming through.

16 Q. And just for purposes of the record it would
17 appear like -- first of all, the first person I believe
18 is Sergeant Biegaj; is that correct?

19 A. I don't know yet. I can't tell enough.

20 Q. Okay. But in any event, you believe you are
21 behind the first person whose face is on the camera, on
22 that person's left side behind on -- on their left; is
23 that fair?

24 A. Yes, sir.

25 Q. All right. I'm going to continue the

1 R. Dee - Examination by Mr. Modica
2 video -- well, let me ask you this: How is it you came
3 to be in the alpha hallway on March 9th of 2018 at
4 about 10:22 a.m.?

5 A. I was responding to something.

6 Q. Do you recall what you were responding to?

7 A. I don't recall the exact radio broadcast.

8 Q. Let me represent to you that there was a
9 10-99 call that morning. Do you recall whether you
10 received that call?

11 A. I did receive a call. I don't remember the
12 exact terminology they used when they broadcast it or
13 the 10 code.

14 Q. Are you familiar with the concept of a 10-99
15 call?

16 A. Yes.

17 Q. What is a 10-99 call?

18 A. An officer in distress.

19 Q. Do you recall where you were located in the
20 facility at the time you got that call on March 9th of
21 2018?

22 A. No, I don't.

23 Q. Do you recall where the call directed you to
24 go?

A. I don't recall what the call was at all.

1 R. Dee - Examination by Mr. Modica

2 Obviously I'm going towards visits, but I don't recall
3 how they broadcast it.

4 Q. All right. So I'm going to continue with the
5 video, and again, we'll just continue to try to trace
6 what we can see about you there.

7 Okay?

8 A. Yes, sir.

9 (Deposition Exhibit A played.)

10 Q. All right. I've paused it.

11 Just for purposes of the record are you present in
12 the box entitled Attorney Visit Sallyport paused at
13 10:22 and 46.533 seconds a.m.?

14 A. Yes, I am.

15 Q. And where are you located, sir?

16 A. I'm the second one in the box with my left
17 hand in the air.

18 Q. And, again, you're in the attorney visit
19 sallyport at that point headed through the door into
20 the area near the attorney visit conference room; is
21 that correct?

22 A. That's correct. On the inmate side.

23 Q. All right. I'm going to continue with the
24 video.

25 (Deposition Exhibit A played.)

1 R. Dee - Examination by Mr. Modica

2 Q. I paused the video again. I would like to
3 focus your attention on the box Attorney Visit A, 10:22
4 50.051 seconds a.m.

5 Do you see yourself there?

6 A. I do.

7 Q. Where are you located?

8 A. Number two in that picture.

9 Q. Would that be toward the right side of the
10 still?

11 A. That's correct.

12 Q. Do you remember what if anything you saw at
13 that time?

14 A. Not exactly, no.

15 Q. Is it fair to say you appear to be looking
16 down at least where we've paused the video?

17 A. Yes, that would be fair.

18 Q. Do you recall what you were looking at?

19 A. I know ultimately there was an inmate placed
20 on the ground, but I don't know what I was looking at,
21 no.

22 Q. I understand. Okay. I'm going to continue.

23 (Deposition Exhibit A played.)

24 Q. I'm going to pause for a second. I don't see
25 you currently in the view where I paused it.

1 R. Dee - Examination by Mr. Modica

2 Did you go to the ground at any point?

3 A. I don't recall.

4 Q. Let me back it up a little bit and maybe we
5 can trace it a little more carefully.

6 (Deposition Exhibit A played.)

7 Q. Okay. Again, I paused the Attorney Visit A
8 box at 10:22 and 49.951 seconds a.m. and, again, you're
9 depicted on the right side of the screen facing so to
10 speak the camera; is that fair?

11 A. Yes, sir.

12 Q. Okay. And can you please just watch yourself
13 carefully and see where you go from there?

14 A. Okay.

15 (Deposition Exhibit A played.)

16 Q. Is it fair to say within a second or two
17 you're out of site of the camera at least?

18 A. Correct.

19 Q. And, again, at least at this point you don't
20 recall exactly what you were doing?

21 A. Correct.

22 Q. Is it possible that you were going down to
23 the ground to assist the others in securing inmate
24 Dublino?

25 A. I would imagine so, but I don't recall.

1 R. Dee - Examination by Mr. Modica

2 Q. All right. And, again, I'm going to continue
3 the video. If you see yourself emerge would you let me
4 know?

5 A. Yes, sir.

6 Q. Okay.

7 (Deposition Exhibit A played.)

8 A. I see myself there.

9 Q. Okay. And for the record I paused in the box
10 labeled Attorney Visit B. I paused it at 10:23 and
11 07.081 seconds a.m.

12 Can you identify for us where you're located?

13 A. I appear to be on the right side of the image
14 far away towards the wall.

15 Q. Would it be fair to say it appears that
16 you're not standing at that time?

17 A. Correct.

18 Q. And, again, any recollection as to what you
19 were doing at that moment?

20 A. No, sir.

21 Q. I'll continue.

22 (Deposition Exhibit A played.)

23 A. Okay. I stand up there.

24 Q. Okay. So I paused the box labeled Attorney
25 Visit B at 10:24 and 00.439 seconds a.m.

1 R. Dee - Examination by Mr. Modica

2 Where do you see yourself?

3 A. I believe I'm to the left of Mr. Dublino.

4 Q. Is it fair to say that inmate Dublino is on
5 his feet?

6 A. Correct.

7 Q. Also fair to say that you're on your feet at
8 that point?

9 A. Yes, sir.

10 Q. And can you tell me who is on -- who's
11 holding inmate Dublino on inmate Dublino's immediate
12 right; who is that?

13 A. I cannot tell from the picture.

14 Q. If I said to you that I thought that was
15 Deputy Gelster, does that help you one way or another?

16 A. I believe Gelster does not have hair, but I
17 don't know. I can't see his face from there.

18 Q. Understood. Okay. I'm going to continue --
19 let me ask you this: At the point that I paused the
20 box of Attorney Visit B as indicated earlier, do you
21 know whether you have your hands on inmate Dublino in
22 any way?

23 A. It appears to me that I do and it appears
24 that we're helping him to his feet, because I believe
25 he's actually taller than me if I recall and in this

1 R. Dee - Examination by Mr. Modica
2 image it looks like he's shorter than me. So it looks
3 like we're assisting him to his feet.

4 Q. Other than assisting him to his feet do you
5 recall any -- having any other physical contact with
6 inmate Dublino on March 9th of 2018?

7 A. I don't recall.

8 Q. At the time that he was being lifted as shown
9 in the photo do you know whether he was handcuffed at
10 that point?

11 A. I'm sure he was, yes.

12 Q. Did you observe him being handcuffed prior to
13 that moment?

14 A. Before he was lifted?

15 Q. Yes, sir.

16 A. He would have been handcuffed before he was
17 stood up.

18 Q. But did you observe the process of
19 handcuffing him?

A. I don't recall.

Q. Do you recall how the cuffs were on his body?

22 First of all, were they in front of him or behind
23 his back?

A Everyone is cuffed behind their back.

25 Q. And is there a typical way that a person

1 R. Dee - Examination by Mr. Modica

2 should be handcuffed behind their back?

3 For example, is it typical to handcuff someone with
4 their palms facing away from the center of their body
5 or towards the center of their body?

6 A. It would depend on the situation.

7 Q. Do you recall specifically how the palms of
8 inmate Dublino were handcuffed behind his back on
9 March 9th of 2018?

10 A. No, sir.

11 Q. All right. I'm going to continue the video.
12 Again, we'll focus on you and what is shown.

13 (Deposition Exhibit A played.)

14 Q. Now, I may have missed it. Did I see you
15 walk from the hallway into the attorney conference
16 room?

17 A. That's correct.

18 Q. And do you recall doing that?

19 A. Yes, sir.

20 Q. Why did you do that?

21 A. Because Mr. Terranova was injured and he was
22 inside the attorney visit room.

23 Q. Do you recall when you first walked in
24 whether there was anyone other than Mr. Terranova in
25 that room?

1 R. Dee - Examination by Mr. Modica

2 A. As far as staff or inmates I don't believe
3 anybody was at all.

4 Q. Did Mr. Terranova say anything to you?

5 A. I don't recall.

6 Q. Do you recall whether you said anything to
7 Mr. Terranova?

8 A. I don't think I did right then. I don't
9 recall, and if I did I don't know what I said.

10 Q. Did you observe Mr. Terranova's physical
11 condition when you walked in the room?

12 A. Yes, I did.

13 Q. What did you observe?

14 A. He was bleeding from both of his eyes and I
15 think someplace else on his face if I recall.

16 Q. All right. I'm going to continue with the
17 video.

18 (Deposition Exhibit A played.)

19 Q. I'm pausing the video.

20 Again, if you look at the box labeled Attorney
21 Visit B, I paused it at 10:24 and 34.273 seconds a.m.

22 Does that show you having just emerged from the
23 attorney conference room?

24 A. Yes, counsel.

25 Q. And you're the person facing the camera on

1 R. Dee - Examination by Mr. Modica
2 the left-hand side, the left most person so to speak?

3 | A. Yes.

4 Q. I'm going to continue the video.

5 (Deposition Exhibit A played.)

6 Q. Just for purposes of the record there appears
7 to be two other of your colleagues with you at the time
8 as you're waiting outside the attorney conference room.

9 Is the gentleman to the left of the photo Deputy
10 Wilson?

11 A. Yes.

12 Q. And can you identify the gentleman to the
13 right of the photo?

14 A. Not with certainty.

15 (Deposition Exhibit A played.)
16 Q. Okay. I've paused the video at the Attorney
17 Visit B box at 10:24 and 53.692 seconds a.m.

18 Is it fair to say you were escorting Mr. Terranova
19 someplace?

20 A. That is correct.

Q. Where were you escorting Mr. Terranova?

22 A. To the closest bathroom in the facility that
23 he could access.

24 Q. I'm going to resume the video.

25 (Deposition Exhibit A played.)

1 R. Dee - Examination by Mr. Modica

2 Q. So I paused the video. I'd like you to focus
3 on the box labeled Attorney Visit Sallyport. I paused
4 it at 10:25 and 07.383 seconds a.m.

5 Is it fair to say you're depicted in that still?

6 A. Correct.

7 Q. And can you identify yourself please?

8 A. I'm in the front right side.

9 Q. And it looks like your hand is either close
10 to or on the back of Mr. Terranova; is that correct?

11 A. Absolutely.

12 Q. And, again, your testimony is that you're
13 escorting him to the closest bathroom?

14 A. That's correct. And making sure he's stable
15 while he walks.

16 Q. Was the closest bathroom off the alpha
17 hallway or someplace else?

18 A. It was off the alpha hallway.

19 Q. I'm going to resume the video.

20 (Deposition Exhibit A played.)

21 Q. I'm going to pause it. In looking at the
22 alpha hallway it appears you're now out of sight. I
23 paused it at 10:25 and 22.298 seconds a.m.

24 Did you see yourself walk down the alpha hallway
25 and pretty much outside the area of the camera?

1 R. Dee - Examination by Mr. Modica

2 A. That's correct.

3 Q. I'm going to continue the video. My
4 recollection is we don't see you at any point through
5 the end of the video, but I'm going to run it and you
6 tell me if you see you at any point. Okay?

7 A. Okay.

8 (Deposition Exhibit A played.)

9 Q. Okay. The video is over.

10 Is it correct you were not depicted from the last
11 time I paused the video?

12 A. Yes, sir.

13 Q. At any point that you observed inmate Dublino
14 was he resisting any of the commands of any of the
15 officers?

16 A. I don't recall.

17 Q. At any point did you ask inmate Dublino
18 whether he was injured in the altercation?

19 A. No, sir.

20 Q. At any point did inmate Dublino offer that he
21 was injured in the altercation?

22 A. Not that I recall.

23 Q. Did you observe any injuries to inmate
24 Dublino?

25 A. No, sir.

1 R. Dee - Examination by Mr. Modica

2 Q. There are a number of folks as you saw on the
3 video that responded. I want to ask you a little bit
4 about some of those folks and the allegations my client
5 has made.

6 I'll start with Sergeant Justin Biegaj. My client
7 alleges that Sergeant Biegaj stomped and stepped on his
8 head and neck while he was on the ground.

9 Did you observe any physical contact between
10 Sergeant Biegaj and my client?

11 A. No, sir.

12 Q. Did you see Deputy Brian Thompson in the
13 area?

14 A. Yes, sir.

15 Q. Do you recall whether he was with his K-9 at
16 the time?

17 A. He was with his first K-9, yes, sir.

18 Q. And do you recall whether he was holding the
19 K-9 during the altercation?

20 A. I believe that he did have the K-9 and then I
21 took the K-9. I'm pretty sure I took the leash from
22 him as he finished handcuffing.

23 Q. At any point did you observe the K-9 -- who's
24 name I believe is Bili; is that right?

25 A. Yes, sir.

1 R. Dee - Examination by Mr. Modica

2 Q. At any point did you observe Bili having any
3 physical contact with inmate Dublino?

4 A. Absolutely not.

5 Q. That would include no indication that Bili
6 bit or scratched inmate Dublino?

7 A. Or licked or kissed.

8 Q. All right. Was there any moment during the
9 altercation when Bili was not secured either by you or
10 Deputy Thompson or anybody else?

11 A. No, sir.

12 Q. You saw Deputy Wilson as part of the response
13 team. My client alleges that Deputy Wilson grabbed his
14 arms and hands and bent them and twisted them in
15 abnormal positions with extreme pressure.

16 Did you see any behavior like that by Deputy
17 Wilson?

18 A. No, sir.

19 Q. I'm going to ask you about Sergeant Matthew
20 Cross. My client alleges Sergeant Cross stood directly
21 over him and stomped on his legs, ankles and feet while
22 he was on the floor.

23 Did you see any behavior like that by Sergeant
24 Cross?

25 A. No, sir.

1 R. Dee - Examination by Mr. Modica

2 Q. Ultimately inmate Dublino was transferred to
3 the infirmary for evaluation. Is that standard
4 practice when there's been an altercation?

5 A. It's standard practice any time there's
6 anything unusual with an inmate.

7 Q. Did you accompany inmate Dublino to the
8 infirmary on March 9th of 2018 after this altercation?

9 A. I don't recall.

10 Q. Do you recall whether there were any
11 photographs taken of inmate Dublino after the
12 altercation?

13 A. No, sir, I don't recall.

14 Q. I'll represent to you that there were some
15 photographs taken.

16 Do you recall whether you were present when those
17 photographs were taken?

18 A. No.

19 MR. MODICA: Okay. I have nothing else. I
20 appreciate your time and your cooperation.

21 THE WITNESS: No problem. Thank you, sir.

22 MS. MOLISANI: Thank you, Sergeant.

23 THE WITNESS: You're welcome. Have a good
24 day.

25 | * * *

1 R. Dee - Examination by Mr. Modica

2 REPORTER CERTIFICATE

3

4 I, Shari L. Vitalone, do hereby certify that I did
5 report in stenotype machine shorthand the proceedings
6 held in the above-entitled matter;

7 Further, that the foregoing transcript is a true
8 and accurate transcription of my said stenographic
9 notes taken at the time and place hereinbefore set
10 forth.

11

12 Dated 7/23/2021

13 at Rochester, New York

14

15 s/ Shari L. Vitalone

16

17 Shari L. Vitalone

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1 R. Dee - Examination by Mr. Modica

2 WITNESS CERTIFICATE

3 **ORIGINAL**

4 STATE OF)

5 COUNTY OF)

6

7 I, Robert Dee, do hereby certify that I have read
8 the transcript of my testimony as taken under oath on
9 Friday, July 9, 2021, and that said transcript is a
10 true, complete and correct record of what was asked,
11 answered and said during said deposition, and that the
12 answers on record therein, and as may be modified in
13 conformity with the attached errata sheet, are true and
14 correct.

15

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21 Subscribed and sworn to before me

22 this _____ day of _____, 2021

23 Notary Public

24

25

1 R. Dee - Examination by Mr. Modica

2 In the Matter of:

3 MARK T. DUBLINO

ORIGINAL

4 Plaintiff

5 -vs-

6 SGT. JUSTIN BIEGAJ, SGT. ROBERT DEE,
DEPUTY BRIAN THOMPSON, DEPUTY FRANK
GELSTER, SGT. MR. CROSS, SGT. MR. ROBINSON,
DEPUTY MR. P. GIARDINA, DEPUTY SHAWN WILSON

7 Defendants

8 Civil Action No. 6:19-cv-6269-DGL

9 Errata sheet for the deposition of Robert Dee taken on

10 PAGE LINE REASON FOR CHANGE

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